

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

INFORMATION TECHNOLOGY,)
INC.,)

Plaintiff,)

4:08CV3207

V.)

BANKEAST,)

MEMORANDUM AND ORDER

Defendant.)
_____)

On November 20, 2008, Defendant BankEast filed a motion to dismiss or, in the alternative, stay this case ([filing 11](#)). BankEast argued that this case should be dismissed or stayed on account of the pendency of a Tennessee state court action which BankEast brought against Plaintiff Information Technology, Inc. (“ITI”). *See BankEast v. Information Technology, Inc.*, No. 173536-3 (Chancery Court for Knox County, Tenn. 2008). BankEast requested that this court abstain from exercising its jurisdiction because the Tennessee state court proceeding involved the same contracts that are at issue in this suit.

After BankEast filed its motion to dismiss or stay ([filing 11](#)), the Tennessee state court proceeding was removed to the United States District Court for the Eastern District of Tennessee. *See BankEast v. Information Technology, Inc.*, No. 3:08-cv-476, CM/ECF [Filing 1](#) (E.D. Tenn. 2008). A motion to remand the action to state court was filed in the Tennessee federal court on December 22, 2008. *Id.* at CM/ECF [Filing 8](#). On account of the pendency of the motion to remand, this court ordered that it would defer ruling on BankEast’s motion ([filing 11](#)) until the Tennessee federal court ruled on BankEast’s motion to remand ([filing 26](#)).

On July 30, 2009, Judge Thomas A. Varlan of the United States District Court

for the Eastern District of Tennessee at Knoxville issued an order transferring the Tennessee action to this court.¹ *BankEast v. Information Technology, Inc.*, No. 3:08-cv-476, CM/ECF [Filing 12](#) (E.D. Tenn. 2008). Judge Varlan's order does not address BankEast's pending motion to remand.

On account of the pending motion to remand, the parties are ordered to advise the court, by brief if necessary, whether this court needs to rule on the motion to remand (i.e. whether or not the motion will be withdrawn) and, if so, whether this court has the authority to rule on said motion. The parties shall further advise whether, if it is necessary to reach the merits of the motion to remand, they are satisfied with the court considering the briefs previously-filed in the Tennessee federal court with respect to this issue, or whether the issue needs to be briefed again by the parties.

IT IS ORDERED that the parties shall have until October 5, 2009, to advise the court, by brief if necessary, whether the court should, or needs to, rule on BankEast's motion to remand.

September 3, 2009.

BY THE COURT:

Richard G. Kopf

United States District Judge

¹ The former Tennessee action is docketed in this court as *BankEast v. Information Technology, Inc.*, Case No. 8:09-cv-0259 (D. Neb. 2009).